
(2013) 01 PAT CK 0097

In the Patna High Court

Case No : LPA No. 1666 of 2012 in CWJC No. 4609 of 2010

Yog Lal Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 PLJR 762

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Y.V. Giri and Shaishav Kumar, for the Appellant; Birendra Kumar, for State and Prabhakar Jha and Ratna Kumari, for Bank, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dated 23rd August, 2012 passed by the learned single Judge in C.W.J.C. No. 4609 of 2010, the writ petitioner has preferred this Appeal under Clause 10 of the Letters Patent. The appellant, then a Branch Manager in Sakhnouli Bharohopur Branch of the respondent Uttar Bihar Kshetriya Gramin Bank (hereinafter referred to as "the Bank"), was alleged to have misused his power as a Branch Manager in extending certain loans and of having exceeded his power in extending certain other loans. For the said act of misconduct a disciplinary enquiry was initiated against the appellant. Charge-sheet was issued on 27th January 2006. As the appellant did not participate in the disciplinary, proceeding and went on to ask for time on medical grounds, under order dated 1st June, 2007, made by the enquiry officer, the enquiry was proceeded ex-parte against the appellant. His representative (the next friend) one Shri A.K. Dubey also was not allowed to appear in the enquiry. After enquiry and examination of the witnesses, the enquiry officer submitted his report on 26th February, 2008 and opined that imputation of charges made against the appellant had been proved. Pursuant to the said report, under order dated 24th September, 2009, made by the

disciplinary authority-cum-Chairman, the appellant came to be dismissed from service.

2. Feeling aggrieved, the appellant approached this Court under Article 226 of the Constitution in C.W.J.C. No. 13039 of 2007. The said writ petition was disposed of with permission to the appellant to avail of the alternative remedy of appeal. In view of the said direction the appellant preferred appeal before the Board of Directors. The Board of Directors dismissed the appeal. The decision was communicated to the appellant on 23rd February, 2010, which reads as under:--

The Board under the Chairmanship of Zonal Manager, Central Bank of India, Zonal Office, Muzaffarpur discussed in detail the appeal of Sri Yog Lal Rai the then Branch Manager of Sakhnauli Bharohapur Branch under Regional Office, Chapra, Distt.-Saran and took the following decision:--

We have gone through the appeal of Mr. Yog Lal Rai and after careful perusal of the proceedings of enquiry and Disciplinary Authority's order, we have taken the view that once the Board had taken lenient view and he was put into the services of the Bank but the delinquent officer again committed gross misconduct hence, there is no case for changing the order and we concur with the punishment of dismissal from service awarded by Disciplinary Authority.

3. Feeling aggrieved, the appellant again approached this Court under Article 226 of the Constitution in above C.W.J.C. No. 4609 of 2010. The petition has been dismissed by the learned single Judge. Therefore, this Appeal.

4. Learned counsel Mr. Y.V. Giri has appeared for the appellant. Mr. Giri has submitted that the disciplinary proceeding as well as the order of the appellate authority are vitiated for violation of principle of natural justice. He has submitted that although the appellant had asked for extension of time, the disciplinary proceeding proceeded against the appellant ex-parte. Not only that the appellant had no opportunity to appear before the disciplinary authority, his representative too was not allowed to appear in the enquiry. The enquiry is, thus, vitiated for violation of principle of natural justice.

5. Mr. Giri has next submitted that the issue of violation of principle of natural justice was raised by the appellant before the appellate authority. The appellate authority was bound to consider the grounds of challenge and to record its decision thereon. Although, the appellant had taken a specific ground of violation of principle of natural justice and the appellate authority was under obligation to give a reasoned order, the appellate authority has dismissed the appeal by a cryptic order without considering or answering the issues raised by the appellant. Mr. Giri has also submitted that although the appellant was given notice to show cause on the matters under enquiry, while dismissing the appellant from service, the appellate authority has taken into consideration the past incidence of dismissal from service and later reinstatement in service. The appellate authority has thus relied upon extraneous materials which did not make part of the enquiry

proceeding. The order of the appellate authority is, therefore, illegal and void ab initio. In support of his submissions Mr. Giri has relied upon the judgments of the Hon"ble Supreme Court in the matters of R.P. Bhatt Vs. Union of India and Ors (UOI) ., ; of Mangalore Ganesh Beedi Works Vs. The Commissioner of Income Tax, Mysore and Another, ; and of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, .

6. None of the above judgments will lend support to the appellant. In the matter of R.P. Bhatt (supra), the relevant rule required the appellate authority to consider appeal on the matters specified under the Rules. The appellate authority was, thus, statutorily bound to record its opinion on specific matters. However, in general the Hon"ble Supreme Court observed,. "It is not the requirement of Art 311(2) of the Constitution of India or of the Rules of natural justice that in every case the appellate authority should in its order state its own reasons except where the appellate authority disagrees with the findings of the disciplinary authority."

7. The Court further observed, "... it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal."

8. The matter of Mangalore Ganesh Beedi Works (supra) was one under the income tax Act where certain obligations are imposed upon the Tribunal. Considering the nature of obligations imposed upon the Tribunal the Hon"ble Court observed, "It is true, In an order of affirmation, repetition of reasons elaborately may not be necessary. But even then the arguments advanced, points urged have to be dealt with."

9. In the matter of Narinder Mohan Arya (supra), the Hon"ble Court held, "An appellate order If it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

10. Thus, what is expected of an appellate authority is application of mind and active consideration of the issues involved. Absence of elaborate description or reason would not violate the principle of natural justice.

11. The Appeal is contested by the Bank. Learned Advocate Mr. Prabhakar Jha has appeared for the Bank. Mr. Jha has submitted that the enquiry cannot be said to have been conducted ex-parte. The appellant was given proper notice of the proceeding and has been extended all opportunities. However, the appellant did not avail of the opportunity and went on asking for further time on production of a medical certificate from Government Sadar Hospital. Though he was called upon to get the certificate countersigned by the Civil Surgeon, the same was not done. In support of his submission Mr. Jha has relied upon the judgments in the matters of Manoj Kumar Vs. The General Manager, S.B.I. and Others and of Niru Parag and Another Vs. The State of Bihar and Others, .

12. We have perused the record. We are convinced that the appellant had no legitimate reason for not attending the disciplinary proceeding nor did he produce the required medical certificate countersigned by or from the Civil Surgeon. Evidently, such conduct of the appellant would lead to an adverse inference against him.

13. We are unable to agree with Mr. Giri that the disciplinary proceeding was conducted ex-parte against the appellant. It is quite clear that the appellant was malingering and deliberately avoided to attend the proceeding. His representative also went on asking for time. The non-co-operation by the appellant constrained the enquiry officer to proceed in absence of the appellant. If the appellant chose not to co-operate, the enquiry cannot be said to be ex-parte.

14. The question is whether the appellate authority was required to make a detailed order in respect of all the charges.

15. The Hon''ble Supreme Court has, as early as R.P. Bhatt Vs. Union of India and Ors (UOI) ., , held that in case the appellate authority agrees with the disciplinary authority, the appellate authority is not required to give elaborate reasons on each point. On perusal of the minutes of the Board of Directors, it is apparent that the relevant issues were considered by the appellate authority. In the present case, as we have recorded hereinabove, the impugned communication does indicate active application of mind and consideration of record. We are unable to agree with Mr. Giri that the appellate order is vitiated for violation of principle of natural justice.

16. It is also not true that the appellate authority dismissed the appeal on the basis of the earlier incidence of dismissal from service. While dismissing the appeal, the appellate authority has indeed referred to the earlier order of dismissal from service and the appellate order to set aside dismissal. The appellant was ordered to be reinstated in service on condition that he should behave, once again the appellant had committed financial irregularities. Nevertheless, the said incidence is not the foundation or the reason for dismissing the appeal:

17. In our opinion, the proof of any one charge of financial irregularities and of exceeding authority would necessarily entail an order of dismissal from service. In the present case all the eight charges have been held to have been proved against the appellant. A mere reference to the earlier incidence would not vitiate the order of the appellate authority nor can it be said that the appellate authority has relied upon extraneous material.

18. No other contention is raised before us. Appeal is dismissed in limine.